APPENDIX 5

THE PROCESSING OF VISA APPLICATIONS - BACKGROUND

This appendix provides background information on Australia's system for processing visa applications, particularly in relation to protection visas.

It outlines the statutory framework and the processing and assessment systems. It also outlines the key findings of previous inquiries.

The statutory framework

The *Migration Act 1958* (Cth) establishes the rules governing immigration and entry to Australia. As DIMIA explained:

> The Migration Act and Regulations made under the Act provide the statutory framework under which the Department manages the delivery of the Government's Migration and Humanitarian programs, facilitates the entry into Australia of persons whose presence is beneficial to Australia, and enforces the requirements of Australia's migration laws, including removing persons with no entitlement under those laws to enter or remain in Australia.[1]

The Migration Act's stated purpose is to regulate in the national interest the travel to, entry and stay in Australia of people who are not Australian citizens.[2] To this end, the Act establishes a system for the grant and cancellation of visas. A visa is in effect a permission to travel to, enter and remain in Australia. That is :

> A visa is similar to a ticket. If a visa is granted to a person who is outside Australia, it will authorise travel and entry to the country and specify the period during which the person is entitled to stay. In the event that the visa is granted inside Australia, it will authorise the period of time that the holder is entitled to remain. The authorised period will be indefinite in the case of a permanent visa, or for a specified period (or periods or until a specified event) in the case of a temporary visa. A visa can authorise single or multiple entry during the term of the visa.[3]

The Migration Act establishes a universal visa regime in that all persons who are not Australian citizens must hold a visa in order to come to and remain in Australia. Non-citizens who do not hold a visa will generally be refused immigration clearance and/or

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1 DIMIA, *Submission 205*, p. 5.

2 *Migration Act 1958*, section 4.

3 K Cronin et al, *Australian Migration Law*, Butterworths Australia, 2001, p. 6127.

taken into immigration detention pending their removal – unless they are granted a visa.[4]

There are over one hundred different visas provided for under the Act. However, these generally fall into one of four main types:

- permanent visas which entitle a person to remain permanently;
- temporary visas which authorise a temporary stay subject to conditions;
- protection visas for people who have been granted refugee status or protection on humanitarian grounds; and
- bridging visas which confer temporary lawful status on someone who would otherwise be unlawful.[5]

The rules governing the grant of each type of visa are specified in the Migration Act and Regulations made under that Act. The Act sets out the broad structure of the legal rules about which non-citizens can come to and remain in Australia. In contrast, the Migration Regulations contain the detailed requirements that non-citizens must meet in order to be granted a visa and about how an application for a visa must be made.[6] They also detail the conditions which may be imposed on any particular visa.

Also relevant are the policies and procedures developed by DIMIA and contained in the Department's *Procedures Advice Manual* and in its *Migration Series Instructions* (or MSIs)**.** These are in effect DIMIA's commentary on and interpretation of the applicable law or rules, especially those that provide decision-makers with some discretion, and are intended to be a guide for decision-makers.[7]

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4 DIMIA *Submission 205*, p. 16. Persons who may be in need of Australia's protection at the border undergo an entry interview are then by the Onshore Protection area of the Department to determine whether they raise information or claims which, prima facie, may engage Australia's protection obligations.

5 Permanent visas, protection visas and most temporary visas are 'substantive' visas for the purposes of the Act. Bridging visas are not. This distinction is important as it is a requirement for most visa applications made in Australia that the applicant hold or has recently held a substantive visa. Non-substantive visa holders – such as the holder of a bridging visa – cannot therefore meet this requirement. K Cronin et al, *Australian Migration Law*, Butterworths Australia, 2001, para. 20.500.

6 DIMIA, *Submission 205*, p. 5. The fact that the detail is contained in regulations reflects the need to change the relevant rules often and quickly.

7 DIMIA, *Submission 205*, p.8. As DIMIA explains, they are intended to provide guidance for decision-makers on how the regulations are to be interpreted.

Also applicable are the Ministerial Directions which govern the exercise of any powers under the Act or the performance of any function under the Act. These are binding on any person or body which has powers or functions under the Act.[8]

Process for lodgement and assessment of visa applications

The following paragraphs outline the process prescribed under the Act for the lodgement and assessment of visa applications.[9] The process and requirements involved may vary according to the type of visa being sought.

Lodgement of a valid visa application

A valid visa application must be lodged. As a general rule, if a visa application is invalid, it cannot be considered.

Prerequisites for a valid lodgement include— use of approved forms; payment of a visa application charge; satisfaction of prescribed criteria and requirements; and lodgement at a prescribed place or address. There are a range of methods and places for making a visa application depending on the type of visa being applied for and where the applicant lives. Most applications must be in writing. However, for some visa types, it is possible to apply on the internet or to make an oral application.

Processing and assessment

Once a valid application has been received, it must be dealt with in accordance with the provisions of the Act and Migration Regulations.[10] In practice, most decisions or determinations made under the Act are made by DIMIA officials acting as the delegate of the Minister.

After an application is lodged, it is registered and acknowledged. Each application is given a file number and a computer generated client identification number. A case officer will be allocated to process the application.

In assessing the application, DIMIA must generally have regard to all the information in the application. DIMIA must also provide applicants with an opportunity to

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8 *Migration Act 1958*, section 499. There are several policy directions in force and they relate to diverse matters such as assessment of applications for a visitor visa, visa processing priorities, and visa cancellation and refusal on character grounds.

9 The outline is drawn from: DIMIA, *Submission 205*, pp 22-23; K Cronin et al, *Australian Migration Law*, paragraphs 9.500-95.210; and J Burn and S Reich, *The Immigration Kit. A Practical Guide to Australia's Immigration Law*, 7th Edition, Federation Press 2005, pp 75-85.

10 Sections 51A to 64 of the Migration Act, for example, provides 'a code of procedure for dealing fairly, efficiently and quickly with visa applications'.

comment on adverse information in certain circumstances.[11] Time limits apply to any response to adverse information.

An applicant can provide further information to DIMIA regarding their lodged application at any point up until a decision on their application has been made. Any information that is provided must be considered by the decision-maker. DIMIA may also invite the applicant to provide additional information. Communications with DIMIA concerning an application must generally be in writing.

Interviews may be required where information on an application needs to be clarified or where there are perceived inconsistencies in the application. Applicants are obliged to attend an interview if requested to do so. At an interview, an applicant will be questioned on their application and asked to explain any suspicious or inconsistent circumstances. A sponsor or other applicant may also be interviewed to check consistency. The interview is recorded and the interview record is kept on the relevant departmental file.

Permanent visas and some temporary visas require that the applicant be in good health and applicants must make themselves available for a medical examination if requested.

Once an applicant appears to meet the main eligibility criteria, they will be asked to have a health check and undergo character or police checks. If the applicant and their family members satisfy the health criterion and criteria for the class of the visa, they will be advised whether an assurance of support and social security bond are needed and whether they will need to pay a second instalment of the visa application charge before the visa is granted.

Processing times

The time taken to process an application depends on a range of factors, including the type of application and the place it is lodged. As DIMIA noted:

> Some visas have very fast processing times whereas others are more protracted. At one end of the spectrum, Electronic Travel Authority (ETA) visas (which provide for tourism or business visits to Australia for nationals considered a low security and compliance risk to Australia) are lodged via

11 The Act imposes obligations to disclose adverse information where the application relates to a class of visa which may be granted while the person is in Australia and there is a right of review to the Migration Review Tribunal or the Refugee Review Tribunal. In these circumstances, DIMIA must invite an applicant to comment on information that: would constitute a reason or part of a reason for refusing the application; is specific to the person (as opposed to the class of persons to whom the applicant belongs); and was not provided by the applicant for the purposes of the application. This statutory duty does not extend to information or matters the disclosure of which would found an action for breach of confidence or which, in the Minister's opinion, would be contrary to the national or public interest. Other limitations also apply. See *Migration Act 1958*, sections 5 (definition of 'non-disclosable information') and 57.

> the internet and are processed electronically mostly in a matter of seconds. … Processing times for migration visas are significantly longer reflecting the more complex nature of the assessments involved – including medical and character checking procedures, verification of relationships and, in some cases, assessment of skills and other attributes. … Processing times for individual cases are [also] dependent on the characteristics of the case – for example, a case with complex health, character or fraud issues will inevitably take longer to resolve than a simple well-documented application.[12]

With the recent exception of applications for protection visas, there is no general statutory obligation placed on DIMIA requiring it to make a decision within a specified time frame.[13] However, Ministerial Directions require officers to have regard to 'compassionate circumstances' and to give priority to certain types of visa applications.

Decision-making

In deciding on a visa application, DIMIA must have regard to the relevant provisions of the Act and Regulations, any applicable ministerial directions, relevant gazettal notices issued to define elements within specific regulations and departmental policy documents that assist in interpreting the prescribed criteria and conditions.

DIMIA can make a decision on a visa application without giving the applicant an opportunity to provide written or oral submissions. DIMIA can also proceed to make a decision if further information has been promised or sought, but not given within the required time frame.

If the Minister or his or her delegate is satisfied that the prescribed health and eligibility criteria are met and that any required payments have been made, the visa must be granted — provided no other provision of the Act or Regulations prohibit it (such as provisions setting a quota or cap restricting the number of certain types of visas that may be granted each financial year). Conversely, decision-makers generally have no discretion to grant a visa if the prescribed criteria are not met.

If the applicant fails to satisfy the eligibility criteria or fails to pay any relevant charges, then the application must be refused. The applicant must be given written notification of the refusal by hand, prepaid post or by electronic means. The notification must state which criteria were not met and/or any provision of the Act or Regulations which prevented the grant of the visa.

If a right of review exists, then the notification must explain that there is a review right. A person who has had their application refused and has an Australian

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12 DIMIA, *Submission 205* p.19.

13 Statutory time limits imposed on applications for protective visas are discussed at paragraph 2.127.

connection may seek merit review by the Migration Review Tribunal (MRT). Generally, an Australian connection will be either that the person was physically present in Australia at the time of making their application, or that they are being sponsored by an Australian citizen or permanent resident. Persons whose applications to the MRT are unsuccessful can seek Ministerial Intervention under section 351 of the Act.

Number of visa applications

It is important to appreciate the volume of decision-making involved in the above processes. In the 2004-05 financial year, for example, DIMIA received a total of 4,555,730 visa applications and granted a total of 4,214,574 temporary entry visas and 133,060 permanent migration visas.[14]

Lodgement and assessment of protection visa applications

Much of the evidence received by the committee during the course of this inquiry related to protection visas. The following paragraphs outline the lodgement and assessment process for protection visa applications.[15]

The international context

Australia is a signatory to the United Nations 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol. As such, Australia is required to provide protection to persons who are in Australia or who arrive in Australia if they fall within the definition of a 'refugee'. The Refugees Convention defines a refugee as a person who:

> Owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his *[sic]* nationality and is unable or owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence, is unable or, owing to such fear, is unwilling to return to it.[16]

The obligation to provide protection arises out of Article 33 of the Refugees Convention which prohibits its signatories from returning a refugee to a country, where, among other things, the life and freedom of that person would be threatened on

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14 DIMIA, *Submission 205*, p.6.

15 A more detailed analysis of the application and determination processes for refugee status is contained in the committee's earlier report on Australia's Refugee and Humanitarian Determination Process. See Senate Legal and Constitutional References Committee, *A Sanctuary under Review. An Examination of Australia's Refugee and Humanitarian Processes*, June 2000, chapters 3 to 6.

16 *1951 Convention Relating to the Status of Refugees*, Article 1A(2). The definition is the result of the combined effect of the 1951 Refugee Convention and the 1967 Protocol.

account of his or her race, religion, nationality, membership of a particular social group or political opinion.

Australia also has similar obligations not to return (or *refoul*) persons who do not satisfy the Refugee Convention's definition of a 'refugee', but who face a risk of a violation of their fundamental human rights. This obligation derives principally from the following conventions:

- Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (ratified by Australia on 8 August 1989);
- Convention on the Rights of the Child (ratified by Australia on 16 January 1991); and
- The International Covenant on Civil and Political Rights (ratified by Australia on 13 August 1980).

The Australia's Refugee and Humanitarian Program – which is administered by DIMIA – is the primary means by which Australia seeks to meet the above obligations. This program has two main components: offshore and onshore. The offshore program seeks to resettle refugees and others in humanitarian need who are outside Australia, while the onshore program provides asylum for people in Australia who meet the refugee criteria as set out in the Convention on Refugees.

The types of visa available and applicable rules and procedures governing assessment of visa applications differ for each program.

The Offshore Humanitarian Resettlement Program

The objective of the Offshore Humanitarian Resettlement Program is to provide resettlement in Australia for refugees and people overseas who are in humanitarian need.[17] The Refugee Convention does not require Australia to accept refugees who are overseas. However, as a humanitarian response, the Australian Government permits overseas refugees to be granted visas and to seek protection in Australia. Every year, the Australian Government, in consultation with the United Nations High Commissioner for Refugees (UNHCR), determines the total number of places that Australia will accept as part of this humanitarian program.[18]

Types of protection visa available

A person who has been recognised as a refugee by UNHCR or another official body must still meet the legal requirements imposed under the Migration Act and Regulations in order to travel to and enter Australia. To this end, the offshore program allows for two categories of permanent visa and two categories of temporary visa. The permanent offshore humanitarian visa categories consist of the following:

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17 DIMIA, *2003-2004 Annual Report*, pp 66-67.

18 DIMIA, Fact Sheet 60, *Australia's Refugee and Humanitarian Program*, 26 August 2005.

The Refugee category, which applies to people who are subject to persecution in their home country and who are in need of resettlement. The majority of applicants who are considered under this category are identified as refugees and referred by the UNHCR to Australia for resettlement. This category includes the Refugee, In-country Special Humanitarian, Emergency Rescue and Woman at Risk visa sub-categories.

The Special Humanitarian Program (SHP) category, which provides for people outside their home country who are subject to substantial discrimination amounting to gross violation of human rights in their home country, are living outside their home country and have links with Australia. A proposer who is an Australian citizen, resident or an organisation that is based in Australia must support applications for entry under the SHP.

An offshore temporary humanitarian visa (THV) is for a person who is subject to persecution or substantial discrimination in their home country and has bypassed or abandoned effective protection in another country and for whom humanitarian entry to Australia is appropriate. There are two types of THV:

- Secondary Movement Relocation Visa. This visa subclass offers a temporary visa to people who have moved from a safe first country of asylum to another country before applying to enter Australia. This visa is valid for five years and enables a person to apply for a permanent protection visa after four and a half years if there is a continuing need for protection.
- Secondary Movement Offshore Entry Visa. This visa subclass offers a temporary visa to people who arrived unlawfully in Australia at offshore excised places and have moved from a safe first country of asylum.[19] A temporary visa will be granted if they can show that they are at risk of persecution or substantial discrimination in their home country. This visa is valid for three years.[20]

The differing rights conferred by the grant of permanent visa and a temporary visa are outlined below.

Lodgement and processing of offshore applications

Offshore applications are generally lodged with Australian diplomatic missions overseas.[21] The committee understands that applications may be assessed by DIMIA

19 An excised offshore place is a place in Australia – such as Christmas Island - that has been excluded from the migration zone for the purpose of prohibiting people who arrive at such places from making a valid visa application. Unlawful non-citizens who arrive at excised offshore places cannot make a valid application for any visa while they are in Australia. DIMIA, Fact Sheet 65 *New Humanitarian Visa*, 22 July 2002; DIMIA *Submission 205*, p. 8.

20 DIMIA, *Submission 205*, p. 30; Burns, *The Immigration Kit*, pp 399-400; DIMIA, Fact Sheet 65- *New Humanitarian Visa*, 19 July 2002.

21 One exception is Special Humanitarian Program applications for persons in Africa or the Middle East. These must be lodged at the relevant processing centre in Australia.

officers at the overseas post concerned or can be referred for assessment in Australia. Applications may also be referred to the UNHCR or another national or international human rights organisation to check claims made by applicants. All applicants must satisfy public interest criteria relating to health, character and national security. The applicant and his or her family must have a medical examination. Police clearances are usually required for every country that the applicant and certain family members have lived in for more than 12 months over the past four years. Clearances are not required from the country in which the applicant suffered persecution or human abuse.[22]

The committee understands that offshore refugee and humanitarian visa applicants are usually interviewed to determine the veracity of their claims, to obtain any additional information required, and to assess whether settlement in Australia is the most appropriate solution.[23]

DIMIA will inform the applicant whether they have been accepted or refused. If accepted, they will be issued with a visa. If refused, an applicant will be sent a letter explaining the reasons for the refusal. The committee understands that applicants outside Australia have no right to merit review if their application is refused.[24]

Numbers of offshore protection visa applications

A significant number of offshore protection visa applications are lodged each year. The number of applications is also increasing each year. In 2004-05, for example, 90,539 applications were made offshore, an increase of 15% in comparison with 2003-04. The number of offshore applications finalised during 2004-05 was 114,060, which is 70% more than in the previous year.[25]

The Australian Government, in consultation with the UNHCR, determines an annual total number of persons that Australia will accept under its Humanitarian Program. In 2004-05, for example, the Government allocated 13,000 places under the program, with 6000 places allocated for the refugee category and 7,000 places allocated for SHP and onshore protection visas. This was an increase of 1,000 on the 12,000 places allocated annually since 1995-96.[26]

A total of 13,178 visas were granted under the Humanitarian Program in 2004-05. Some 12,096 of these were granted to persons overseas and 1,082 visas were granted to people in Australia. Visas were generally granted in line with regional priorities

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22 Burn & Reich, *The Immigration Kit*, pp 428-429, DIMIA, *Submission 205*, pp 30-32.

23 Burn & Reich, *The Immigration Kit*, p. 428.

24 Burn & Reich, *The Immigration Kit*, p. 404.

25 DIMIA, *2004-2005 Annual Report*, p. 90. In 2003-2004, 78,971 applications were made offshore, an increase of 25% from the previous financial year. DIMIA, *2003-2004 Annual Report*, p. 68.

26 DIMIA, *2004-2005 Annual Report*, p. 88.

recommended by the UNHCR, with 70 per cent of visas being granted to applicants from Africa, 26 per cent from the Middle East and South West Asia and the remainder from the Asia/Pacific, Europe and the Americas.[27]

Processing times for offshore protection visa applications

DIMIA's aim is to finalise 75 per cent of offshore applications within 12 months of lodgement. In 2004-05, 75 per cent of offshore applications were finalised within 9.5 months, with 79 per cent being finalised within 12 months.[28]

The Onshore Protection Program

The second component of the Refugee and Humanitarian Program is the Onshore Protection Program. It applies to people already in Australia when they claim Australia's protection.

Types of protection visa available

Two general types of protection visas are available to onshore applicants. A person who arrived lawfully in Australia (for example, with a valid visa) and is found to require protection may be granted a permanent protection visa (PPV).[29] This enables them to live permanently in Australia. A person who arrived unlawfully in Australia (for example, without a valid visa or passport) and is found to require protection may be granted a temporary protection visa (TPV), which provides them with temporary residence for three years in the first instance.[30]

DIMIA advised that the grant of a permanent protection visa confers the following rights:

- permanent residence in Australia;
- access to Australia's public health services including Medicare benefits, Pharmaceutical Benefits Scheme, and public hospital benefits;
- permission to work;

27 DIMIA Fact sheet 60. *Australia's Refugee and Humanitarian Program*, 26 August 2005.

28 DIMIA, *2004-2005 Annual Report*, p. 90. In 2003-2004, 87 percent of offshore applications were finalised within 12 months of lodgement, with 75 percent finalised within 10 months of lodgement. Applications from 67,081 persons were finalised within that program year. DIMIA, *2003-2004 Annual Report*, p.68.

29 The Migration Act generally requires all persons, including Australian citizens, arriving in Australia to pass through immigration clearance. This typically occurs when a person passes through customs at an airport or port. Non-citizens generally must show evidence of a valid visa and their identity to be immigration cleared. DIMIA, *Submission 205*, p. 15.

30 DIMIA, *Submission 205*, p. 24.

- access to a range of employment benefits (including Disability support pension, Newstart Allowance, Fully Job Network Eligible, and other similar benefits);
- access to a wide range of welfare benefits (including Austudy, Carer Allowance/Payment, Child Care Benefit, Family Tax Benefit, Health Care Card, Maternity Payment, Mobility Allowance, Sickness Allowance, Youth Allowance, Special Benefit, and other similar benefits);
- access to a range of settlement services (such as Adult Migrant English Programme, Community Settlement Services Scheme, Integrated Humanitarian Settlement Strategy, Programme of Assistance for Survivors of Torture and Trauma, and other similar services);
- access to a range of education services (including ESL New Arrivals Programme, Language, Literacy and Numeracy Programme, New Apprenticeships, Vocational Education & Training Priority Places Programme, and other similar schemes);
- permission to travel to and enter Australia for five years after grant; and
- eligibility to apply for citizenship after two years permanent residence.[31]

In contrast, a temporary protection visa provides:

- three year temporary residence in the first instance;
- access to Australia's public health services such as Medicare benefits, Pharmaceutical Benefits Scheme, and public hospital benefits;
- permission to work (including Job Matching assistance through Centrelink)
- access to a limited range of welfare benefits (including Child Care Benefit, Special Benefit, Maternity and Family Allowances and Family Tax Payment); and
- access to a limited range of settlement services (such as Integrated Humanitarian Settlement Strategy and Programme of Assistance for Survivors of Torture and Trauma).[32]

The TPV provides no rights for people to bring their families into Australia and does not provide an automatic right of return to Australia if the TPV holder departs Australia.[33]

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31 DIMIA, *Submission 205*, pp 26-27, 31-32. The committee understands that the Australian Citizenship Bill 2005 will require three years permanent residence before one can apply for citizenship.

32 DIMIA, *Submission 205*, pp 26-27, 31-32. See also DIMIA Fact Sheet 64, *Temporary Protection Visas*, 20 November 2005.

33 DIMIA, S*ubmission 205*, p. 27.

TPV holders may apply for a further protection visa at any time. However, a further protection visa may be granted only after a period of 30 months and if they are still considered to need protection at that time.

Whether the further protection visa is a permanent or temporary protection visa depends on a number of factors including their actions before they arrived in Australia. DIMIA advised, for example, that certain restrictions apply to persons who, before arriving in Australia, resided for a continuous period of seven days or more in another country in which they could have sought and obtained effective protection of the country or through UNHCR offices located in that country.[34] Persons in this category who apply for a further protection visa may only be granted another TPV (ie, as opposed to a PPV). The Minister has the power to waive this restriction if satisfied that it is in the public interest to do so.[35]

It is understood that the rationale for this 'seven day rule' is that unlawful arrivals who could have sought protection in another country on the way to Australia should not benefit by being granted a permanent protection visa in Australia.[36]

The Migration Regulations also provide that being convicted of any offence for which the maximum penalty is imprisonment for at least 12 months can bar a TPV holder from obtaining a permanent visa for a period of four years from the time the conviction is given. That is, the person is only eligible for a grant of a further TPV as opposed to a PPV.[37]

Until recently, TPV holders were barred from applying for any visa other than a further protection visa while they remained in Australia. However, the Government in 2004 announced measures whereby certain TPV holders may apply for and be granted various mainstream or non-humanitarian visas.

This change was made in recognition that some current and former TPV holders have made important contributions to the community during their time in Australia, particularly in rural and regional areas and some have special skills that would

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34 As a general rule, 'effective protection' is considered by DIMIA to involve the person not only being permitted to remain in the third country without risk of persecution for a Convention reason, but also not being at risk of being refouled to their country of origin where they have a well-founded fear of persecution for a Convention reason. It is not necessary for a country to be a signatory to the Refugees Convention for it to be capable of providing effective protection. It is not necessary for a country or the UNHCR to provide a speedy decision, or for a resettlement or local integration solution to be provided, in order for effective protection to considered to be available. Advice to the secretariat from DIMIA, 15 January 2006.

35 DIMIA, *Submission 205*, p. 24. The rule applies to applications for a further protection visa application lodged after 27 September 2001 (depending on individual circumstances).

36 Burn & Reich, *The Immigration Kit*, p.438.

37 Migration Regulations, Regulation 866.222A. There is, however, a power to waive this rule so that a permanent protection visa can be granted, if it would be in the public interest (see Chapter 3).

otherwise qualify them for a migration visa. It was also recognised that some TPV holders have established strong links to Australian nationals and may be able to qualify for the grant of a mainstream visa.[38]

Bridging or interim visas and entitlements

Asylum seekers who apply for protection in Australia may be granted a bridging visa pending the determination of their application.[39]

The grant of a bridging visa allows the applicant to remain lawfully in the community until their application is finalised. A bridging visa will usually cease on the grant of a protection visa or 28 days after notification of a decision that a person is not a refugee. It will also remain in force if an application for review is lodged with the Refugee Review Tribunal (RRT) and provides lawful status during the review. A bridging visa will cease 28 days after notification of an adverse Tribunal decision.[40]

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38 DIMIA Fact Sheet 64d, *New Onshore Visa Options for Temporary Protection and Temporary Humanitarian Visa Holders*, 24 August 2004. DIMIA, *Submission 205*, p. 24. The changes apply to current and former holders of certain sub-classes of Temporary Protection Visas and Temporary Humanitarian Visas who were in Australia on or before 27 August 2004.

39 DIMIA's submission summarises the classes of Bridging visas, established by the Regulations, as follows:

- Bridging visa A. It is available to non-citizens who apply for a visa within Australia and who hold another visa (other than a Bridging Visa or Criminal Justice Visa) at time of application. It does not come into effect unless the first substantive visa ceases in which case it serves to keep them lawful until the application is decided.
- Bridging visa B. It is available to all Bridging visa A holders who have valid reasons for wanting to travel outside Australia while their substantive visa application is being considered.
- Bridging visa C. It is available to applicants who do not hold a visa when they apply for another visa while in Australia, with the exception of people who have been granted a Bridging visa E since they last held a substantive visa.
- Bridging visa D. It is a short term bridging visa available to persons who are unlawful or will soon become unlawful and want to make an application for a visa but are temporarily unable to do so; or, who do not want to or are unable to apply for a visa but a compliance officer is not available to interview them.
- Bridging visa E. It is available to certain unlawful non-citizens who are located by DIMIA and who may be applying for visas or making arrangements to depart Australia.
- Bridging visa F. It enables the release from immigration detention of certain unlawful non-citizens who may be able to assist with investigations into people trafficking, sexual servitude and/or deceptive recruiting offences.
- Bridging visa R. It enables the release from immigration detention of certain unlawful non-citizens who are awaiting removal from Australia and are invited by the Minister to apply.

The conditions attached to a Bridging visa vary according to the type of visa applied for, the applicant's immigration status and personal circumstances at the time of application. DIMIA, *Submission 205*, p.10.

40 DIMIA, *Submission 205*, p. 29.

The following table shows the total number of bridging visas in force in recent years:

Table 1: Bridging visas in effect as at 30 June

As at 30 June	A	B	C	D	E	F	**Total**
1999	28,650	509	4,719	3	4,555		**38,436**
2000	30,458	640	4,552	4	5,604		**41,258**
2001	27,134	531	3,950	1	6,967		**38,583**
2002	25,608	415	3,470	2	8,616		**38,111**
2003	22,692	374	2,866	2	8,605		**34,539**
2004	20,192	313	1,663	0	6,207	1	**28,376**
2005	14,689	282	1,458	8	7,927	0	**24,364**

Source: The table was provided to the committee by DIMIA on 9 January 2006.

Note: DIMIA advised that the data on Bridging Visa E (BVE) is taken from a snapshot of BVEs in effect as at 24 June 2005. The Bridging Visa F was introduced on 1 January 2004. The total number of bridging visas in effect as at 30 June 2005 also varies from that reported in *Managing the Border 2004-05*, which was in error.

The type of bridging visa issued to an applicant is determined in part by the time and circumstances in which they lodge their protection visa application. This in turn determines the conditions under which the applicant may remain in Australia pending the outcome of their application.

An example is the right to work in Australia pending the determination of an application for protection visa. Applicants who have been in Australia for fewer than 45 days in the 12 months before they lodge their application may be granted a bridging visa with work rights. In contrast, work rights are not generally available to applicants who have been in Australia for 45 days or more in the 12 months before they lodge their application. They can only be granted a bridging visa with a condition attached that prohibits them from working. This condition can only be changed if the person falls within in a particular class of applicant specifically exempted by the Minister from this 'forty five day rule' or if DIMIA fails to determine the application within six months of its lodgement. In the latter case, an applicant who held a valid visa on the day they lodged their application (that is, they were not unlawful), and who can demonstrate a compelling need to work, may then apply for and be granted another bridging visa with permission to work.[41]

The grant of work rights also determines whether an asylum seeker can access Medicare and related public health benefits while his or her application for a

41 The 45 day rule applies to protection visa applications lodged on or after 1 July 1997. DIMIA Fact Sheet 62, *Assistance for Asylum Seekers in Australia*. 20 November 2003. See also Germov & Motta, *Refugee Law in Australia*, Oxford University Press 2003, p.69.

protection visa is being assessed. An asylum seeker must hold a valid visa (including a bridging visa) with work rights in force in order to access Medicare.[42]

As a general rule, protection visa applicants in Australia are not entitled to social security benefits while their application is being determined. However, they may be eligible for assistance under the Australian Government's Asylum Seekers Assistance Scheme. To be eligible for assistance, an applicant must generally hold a bridging visa, have applied for a visa at least six months ago, and be unable to meet their basic needs for food, accommodation and health care. Recipients under the Scheme who do not have access to Medicare can receive assistance with health care costs and counselling services.[43]

Protection visa applicants on bridging visas must generally stay in Australia until their application is finalised. If they leave the country, they will not be allowed to return unless they hold a visa giving them permission to re-enter Australia.[44]

Processing and assessment of onshore protection visas applications

A person in Australia must apply to DIMIA for the grant of a protection visa. In order to engage Australia's protection under the Onshore Program, he or she must establish that he or she is a 'refugee' within the Convention definition as it is understood in Australia. Once a valid application – on the proper form and with the appropriate fee -- – is lodged with DIMIA, a DIMIA officer (acting as delegate of the Minister) is assigned as a case officer. Their role is to assess the application against the relevant definition of a refugee, as well as other criteria prescribed under the Migration Act for the grant of a protection visa – such as health and character requirements.[45]

It is important that the application form be completed as fully as possible or it may be rejected as an invalid application. An application must contain substantive claims in order to be valid.[46] An applicant must make a claim under the Refugee Convention that they are a person to whom Australia has protection obligations.

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42 DIMIA Fact Sheet 62, *Assistance for Asylum Seekers in Australia*. 20 November 2003. Some asylum seekers without work rights may qualify for Medicare if they are the spouse, child or parent of an Australian citizen or permanent resident. Burns, *The Immigration Kit*, pp 456-457.

43 The Asylum Seekers Assistance Scheme is administered by DIMIA through contractual arrangements with the Australian Red Cross Society. In 2002-03, the Scheme assisted 1,865 clients at a cost of $9.566 million. DIMIA Fact Sheet 62, *Assistance for Asylum Seekers in Australia*, 20 November 2003.

44 An example is Bridging visa B. See above.

45 The requirements for a valid protection visa application are set out in the Migration Regulations. These include the requirement that an application be made on Form 866. *Migration Regulations 1994*, Item 1401 of Schedule 1. For further information concerning Form 866 and the requirements for a grant of a protection visa, see Senate Legal and Constitutional References Committee, *A Sanctuary under Review*, pp 109-114.

46 See cases cited in Germov, *Refugee Law in Australia*, p. 69.

If more information or clarification of claims is required, the primary decision-maker can seek further written information from the applicant or interview the applicant. Not all applicants are interviewed. An applicant may take an adviser or a friend with them to attend an interview, but the adviser can only observe and cannot participate in the interview.[47] DIMIA can provide interpreters at the interview, if required.

In making a determination, the primary decision-maker can refer to information on the social and political situation in the applicant's country of origin obtained through the department's Country Information Service (CIS) – a database containing information from a range of sources, including DFAT. Information from other sources may also be used in deciding whether an applicant's claims come under the definition of a refugee.

Applicants are given the opportunity to respond to certain adverse material that is before the primary decision-maker and which may be taken into account when a decision is made. All statements made by or on behalf of the applicant may form part of the evidence that the primary decision-maker considers in deciding the application.

The decision-maker then makes a determination whether the applicant meets the tests for refugee protection at Article 1A of the Refugee Convention. If so, the prescribed health and character checks are then undertaken. Provided that the character checks are clear and the applicant is not considered a danger to the security of Australia, a protection visa is granted.

Applicants assessed as not meeting the criteria for refugee status may appeal to the Refugee Review Tribunal (RRT). They are provided with a written record of the decision, outlining findings of fact and the reasons for the decision, and details of their right of review.[48]

Numbers of onshore protection visas granted

DIMIA finalised 8,278 onshore protection visa applications in 2004-05.[49] This resulted in 4,601 protection visas being granted, of which 4,293 were PPVs and 308 were TPVs. Of these, 922 visas were the result of an initial application and 3,679 arose out of applications by TPV holders for further protection. [50]

Processing times for onshore protection visa applications

DIMIA advised the committee that:

> Current protection visa processing times are short by world standards. In 2004-05, some 80 per cent of initial applications for protection from

47 Burn & Reich, *The Immigration Kit*, p. 450.

48 DIMIA, *Submission 205*, p. 24.

49 DIMIA *2004-05 Annual Report*, pp 94-95. Finalisation decisions including primary decisions, visa grants resulting from review tribunal decisions and certain visa cancellation decisions.

50 DIMIA, *2004-2005 Annual Report*, pp 94-97.

> applicants in the community were finalised by DIMIA within 90 days of application. For 2004-05, some 81 per cent of initial protection visa applicants from persons in detention were finalised by DIMIA within 42 days of lodgement.[51]

On 17 June 2005, the Prime Minister made a commitment that all primary protection visa applications will be decided within three months of the receipt of the application. This has since been reflected in legislation. The Prime Minister also set a deadline of 31 October 2005 for DIMIA to complete all primary assessments of the 3400 applications for permanent protection visas arising from the existing caseload of temporary protection visa holders.[52]

Offshore processing in 'declared' countries – 'the Pacific solution'

The Migration Act provides for the offshore processing of protection visa applications made by asylum seekers in 'excised' areas of Australia.

The Migration Act was amended in September 2001 to allow for certain parts of Australian territory to be excised from the migration zone.[53] The effect was that asylum seekers who enter Australia unlawfully at these places are prevented from making an application for any visa for Australia, unless the Minister considers this to be in the public interest. The legislation also conferred discretions on officials to detain unlawful non-citizens in an excised offshore place, or persons seeking to enter an excised offshore place, who would be unlawful on entry.[54]

The amendments also provided that unlawful non-citizens who enter an excised offshore place could be taken to a 'declared country' for processing and determination of their refugee claims.[55] DIMIA advised that:

> A declaration of a country for this purpose can be made only by the Minister, where fundamental safeguards to adhere to Refugee Convention obligations are in place. The Minister must be satisfied that a declared country provides people seeking asylum with access to effective procedures for assessing their claims. Asylum seekers must be provided with

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51 DIMIA, *Submission 205*, p.25. DIMIA's target for processing of protection visa applications from persons placed in immigration detention is to finalise 60% of those applications within 42 days of lodgement (excluding periods where there are factors outside of DIMIA's control that prevent finalisation). DIMIA, *2004-2005 Annual Report*, p. 96.

52 DIMIA, *2004-2005 Annual Report*, p. 96. See also Senator the Hon Amanda Vanstone, 'DIMIA meets commitment to Protection Visa applicants', Media Release, 1 November 2005. See also DIMIA, Answer to Question on Notice, 5 December 2005, p. 40.

53 Christmas Island, Thursday Island, Horn Island and Ashmore and Cartier Islands and the Cocos (Keeling) Islands, Australian sea installations and Australian resource installations are excised offshore places. The Migration Regulations may also prescribe certain islands or external territories as excised offshore places (section 5 definition).

54 *Migration Act 1958*, sections 189(3) and (4).

55 *Migration Act 1958*, section 198A.

> appropriate care and protection pending the determination of their refugee claims and while they await either resettlement or return.[56]

Pursuant to the above, the Australian Government established offshore processing facilities in two declared countries – Nauru and Papua New Guinea. These facilities were set up with the cooperation of the Governments of Nauru and Papua New Guinea. Asylum seekers are granted special purpose visas by those countries to facilitate their stay while they await processing and resettlement or return.[57]

Assessment of protection claims by asylum seekers in the offshore processing facilities to date has been undertaken by both UNHCR representatives and DIMIA officials. DIMIA advised the committee that these processes were consistent with Australia's obligations under the RefugeeConvention.

> Australia's processes for refugee status determination for persons who arrive without authority in excised offshore places or for persons taken to the Offshore Processing Centres are modelled on those of the UNHCR. These processes enable Australia to conduct refugee assessments, and reviews of such assessments, offshore and to advise the Minister accordingly.[58]

Offshore processing centres accommodated 1,547 people from September 2001 to June 2004. Their claims for refugee protection were considered by Australian authorities or the UNHCR. Of the 1,547, some 839 were resettled prior to 30 June 2004. In 2003-04, 122 were resettled in Australia, New Zealand, Sweden and Canada. Of these, 90 were assessed as refugees, while 32 non refugees were resettled in New Zealand and Canada under humanitarian or other programs. Of those found not to be refugees, 93 returned voluntarily to their country of origin or to a third country. At 30 June 2004, 225 people remained in Nauru, most from Afghanistan and none in Papua New Guinea.[59]

On 14 October 2005, the Minister announced that 25 of the 27 people then remaining on Nauru would be brought to Australia. The Committee understands that this decision follows a review of their cases and a report by independent experts, who warned that urgent action was required to prevent further deterioration in the mental health of those in the offshore processing camp.[60] The Minister advised that the Nauru Offshore Processing Centre would remain available to deal with future cases if the need arises. The Minister also advised that:

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56 See DIMIA *Submission 205*, pp 28-29.

57 DIMIA *Submission 205*, p. 29.

58 DIMIA, *Submission 205*, pp 29-30.

59 DIMIA, *Managing the Border: Immigration Compliance 2003-2004 Edition*. (Commonwealth of Australia, 2005).

60 Michael Gordon 'Detainees leave Nauru" *Sydney Morning Herald*, 14 October 2005, p. 5. Michael Gordon, 'Asylum Seekers: Vanstone promises quick response to Nauru report', *The Age,* 30 September 2005, p. 6.

> … the remaining two people had received adverse security assessments and therefore remained on Nauru.[61]

Problems inherent in assessing protection visa applications

The very nature of protection visa applications and claims on which they are based pose difficulties for applicants and decision-makers alike.

As the committee noted in its 2000 inquiry into the operation of Australia's refugee and humanitarian program, there is often a great disparity among asylum seekers in terms of knowledge, education and financial resources.[62] The circumstances in which they have left the country of origin may mean that many will not have documentation immediately available to support their claims or which can confirm their identity, nationality or citizenship. Moreover, as the committee also noted in its earlier report, asylum seekers:

- are often under a great deal of emotional stress;
- are frequently apprehensive about dealing with government officials;
- have few if any links to friends, relatives or community networks who may be of assistance;
- commonly cannot speak, read or write in English;
- sometimes lack any education at all;
- have little, if any, understanding of how the refugee determination system works, or of what their rights and responsibilities are in Australia; and
- have limited, if any, income or financial resources at their disposal.[63]

Compounding these difficulties is the fact that some asylum seekers have been subjected to torture and trauma. As the Survivors of Torture and Trauma Assistance and Rehabilitation Service (STTARS) advised:

> The first interview with a DIMIA case officer is often difficult for a number of reasons. … case officers sometimes fail to recognise that the after effects of trauma commonly include discontinuity of experience, a sense of detachment and loss of control. This may mean that during structured assessment interviews a traumatised individual may suffer significant short and long term memory loss or impairment. The phenomenology of Post Traumatic Stress Disorder often involves memories which are vivid and emotionally laden but fragmented and disorganized. ... This will adversely

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61 Minister Vanstone, 'Update on Nauru', Media Release, 14 October 2005.

62 See Senate Legal and Constitutional References Committee, *A Sanctuary under Review*, pp 76-77.

63 Senate Legal and Constitutional References Committee, *A Sanctuary under Review*, pp 76-77. Ms Birss, Refugee Advocacy Service of South Australia, *Committee Hansard*, 26 September 2005, pp 14, 26.

> affect an applicant's ability to recall the strict chronology of events or the detail of events which are embedded in experiences of high emotional valence. In some interviews where the officer is predisposed to doubt the veracity of claims, the questioning style may begin to resemble an interrogation. This may trigger intrusive thoughts and feelings from the past and precipitate mild dissociative episodes or other defensive strategies where the applicant may appear disinterested or remain silent. This may be interpreted as the applicant being uncooperative or evasive. Over a period of time and with fairly intensive counselling and therapeutic interventions, the applicant may begin to integrate some past experiences and recall further details. When this additional information is submitted, it may be viewed with suspicion or even considered a fabrication to strengthen his or her claim.[64]

Issues of culture can make the application and assessment process even more complex. An applicant's cultural background and gender can affect communication with and assessment by officials. In many Asian and Middle Eastern countries, for example, it may be considered discourteous to look a 'higher ranking' person in the eye, or to answer a question directly without giving the background details or history to the answer. As one commentator noted:

> This style can appear evasive and irritating to persons operating within an Anglo-Saxon legal system [or context], which emphasises direct and concise responses. Excessive detail about tangential issues can convey the impression that the applicant is trying to mask a lack of substance which, in turn, can create a perception in the mind of the decision-maker that the applicant lacks credibility. However, lack of detail or an overly laconic response can [also] create the same poor impression albeit this is more likely in cases where the applicant has claimed a reasonably direct and active involvement in political or religious movements.[65]

Decision-makers need also to take account of the social and cultural barriers faced by some female protection visa applicants, such as those who face difficulties in making their case when they have endured painful experiences (including sexual violence or forced marriage). Cultural norms may also mean that in some cases the experience of female family members may not be given sufficient weight by male members of the family.[66]

A further difficulty is the complexity of Australian migration law and the application and assessment process itself. The latter begins with a requirement to fill out long and complex forms, posing particular problems for applicants who may not read, speak, or write English. As the Legal Aid Commission of NSW pointed out:

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64 *Submission 138*, p. 2.

65 Germov & Motta, *Refugee Law in Australia,* p. 522.

66 Germov & Motta, *Refugee Law in Australia*, p. 522.

> It is a very complex area, and yet most of the applicants are people who do not speak English, who do not have legal representation and who are confused and often traumatised.[67]

Concerns previously raised over DIMIA's processing

Many of the submissions received by the Committee during this inquiry expressed significant concern at the manner in which DIMIA processes and assesses visa applications, particularly protection visa applications. These issues are discussed in Chapter 2 of this report.

Concerns raised during earlier reviews

There have been several reviews in recent years of the processing and assessment of visa applications, including protective visa applications.[68]

This committee conducted an extensive inquiry during 1999 and 2000 into the onshore determination processes for refugee and humanitarian visa applications.[69] The focus of that inquiry (and of most other inquiries in this area to date) was on the quality of service and assistance provided to asylum seekers in Australia, especially the most vulnerable such as those held in detention while their claims for protection visas were being assessed and adverse decisions appealed.

A key theme or claim put forward in submissions and hearings at that time was that changes and improvements were required to ensure that the processing and assessment of refugee and humanitarian visa applications was more transparent and equitable and did not unduly disadvantage the most vulnerable of asylum seekers.

A range of concerns were raised at that time over whether asylum seekers in Australia were being provided with or had ready access to appropriate information, advice and assistance (including legal advice and interpretation services) when preparing and lodging their applications. It was recognised that access to the latter at the outset can result in a higher quality application that better addresses the refugee criteria, and therefore increases the efficiency of the determination process and the likelihood of a correct decision early in the process.[70] As the committee acknowledged in its 2000 report:

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67 Ms Biok *Committee Hansard*, 28 September 2005. p. 62.

68 The following paragraphs are drawn from a summary prepared by the Parliamentary Library of four recent inquiries - into Australia's onshore asylum system, aspects of immigration detention and discretionary ministerial powers to grant visas. Adrienne Millbank, Parliamentary Library Memorandum, 22 September 2005, p. 3.

69 Senate Legal and Constitutional References Committee, *A Sanctuary under Review: the operation of Australia's Refugee and Humanitarian Program,* report tabled June 2000.

70 Senate Legal and Constitutional References Committee, *A Sanctuary under Review,* para 3.41.

> For the refugee determination process to work, it would appear that access to accurate information is critical. Every effort must be made to ensure that asylum seekers understand the rules relating to entry; their rights and obligations; and the basis on which their claims for asylum will be accepted. The corollary to this point is that access to interpreter and translator services is equally critical since it is generally the medium by which such communication takes place.[71]

Concerns were also expressed at that time over departmental procedures and standards for the assessment of applications. These included :

- inflexible time frames for lodging applications for protection visas at the primary decision-making stage;
- DIMIA's potential conflict of interest in being the department responsible for determining both migration matters and refugee matters;
- the adequacy of DIMIA decision-making and the limited number of interviews conducted by DIMIA at the primary application stage;
- the quality of information available from DIMIA's Country Information Service and the DIMIA's use of that information; and
- perceived inconsistencies in the quality of DIMA decision-making, where, on occasion, departmental conclusions appeared contrary to the country information.

It was put to the committee at that time that changes and improvements were needed to make decision-making more transparent and more transparently equitable, to improve the skills and training of DIMIA decision-makers, and to provide more assistance to asylum seekers, including legal advice and access to the judiciary via review rights.

In light of the above, the committee's recommendations in its 2000 inquiry report focussed on measures to improve the provision of information about the existing system to asylum seekers at all stages of the process. It also recommended further investigation and research into the operation of the onshore asylum system (including that the Australian National Audit Office (ANAO) should determine whether asylum seekers in the community were getting their full financial and other entitlements and whether improved primary decision-making would reduce program costs, and that DIMIA should analyse the cost of 'fulfilling Australia's international legal obligations'). The committee also recommended the development of better protocols and information around removals and the Minister's discretionary powers.[72]

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71 Senate Legal and Constitutional References Committee, *A Sanctuary under Review,* para.3.31.

72 Adrienne Millbank, Parliamentary Library Memorandum, 22 September 2005, pp 1-3.

The Government's response

The Government's response to the above-mentioned recommendations was tabled in the Senate on 8 February 2001.[73] Its response was recently described as follows:

> The Government response to the inquiry's report was dismissive, with the Government claiming either that it was already doing what was recommended or that it was already doing what was reasonable and appropriate and practical. … to some extent events overtook this inquiry, with tougher measures (the TPV regime) being introduced while the inquiry was running, boat arrivals virtually stopping following the stand-off with the Tampa in late August 2001, and onshore asylum claims declining dramatically.[74]

The ANAO audit

The ANAO undertook a performance audit of DIMIA's management of the processing of protection visa applications, the report of which was tabled in June 2004.[75]

The audit's objective was to assess the extent to which protection visa applications in Australia were processed in accordance with relevant laws and policies, and whether DIMIA employed appropriate mechanisms to ensure compliance with those laws and policies.[76] The audit did not specifically undertake the efficiency audit recommended by the committee in 2000 to determine whether improved primary decision making would reduce program costs. Instead the focus was more on whether:

- DIMIA's decisions on protection visa applications were accurate, timely, consistent and in accordance with law and policy;
- DIMIA effectively managed its relationship with the RRT;
- DIMIA monitored, reviewed, and assessed the risks to the decisions in the processing of onshore asylum seekers; and
- DIMIA consulted relevant stakeholders regarding the processing of asylum seekers.

The ANAO's overall conclusion in 2004 was that DIMIA's onshore processing of asylum seekers was managed well.[77] Specific findings included the following:

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73 Government response to the Senate Legal and Constitutional References Committee report:' *A Sanctuary under review, an examination of Australia's refugee and humanitarian determination process*', Australian Government, 8 February 2001. See Appendix 6.

74 Adrienne Millbank, Parliamentary Library Memorandum, 22 September 2005, p. 3.

75 Australian National Audit Office, *Management of the Processing of Asylum Seekers,* Audit Report No. 56, 2003-2004. The committee had written to the Auditor-General to draw his attention to the committee's recommendations.

76 Australian National Audit Office, *Management of the Processing of Asylum Seekers*, p. 11.

77 Australian National Audit Office, *Management of the Processing of Asylum Seekers*, p. 15.

- The overall standard of record keeping on protection visa application case files was high and the decision-making process and the reasons for decisions made were adequately documented. However, the standard of decision records varied between processing offices. In a small number of cases, the ANAO was also unable to determine the rationale behind the decision.
- The timeliness of application processing was in line with the quality measures prescribed by DIMIA's Portfolio Budget Statements. There were cases where applications took longer to process than the times prescribed by DIMIA's published performance indicators. However, these were generally cases in which external factors, including those beyond DIMIA's control, influenced the timeliness of processing. These included clearances and checks processed by police and health officials in other countries. The ANAO recommended that DIMIA enhance its monitoring of such cases in order to identify common causes of extended delay and any actions that could be initiated to improve timeliness.
- DIMIA had adequate formal and informal quality assurance mechanisms in place to monitor and enhance the quality of its decision-making for onshore protection visas.
- DIMIA decision-makers had access to a comprehensive and well defined set of procedures and guidelines that are updated to reflect changes to legislation and policy. However, the ANAO also found that:
- … there was a significant time lag between the announcement of a change in legislation and/or policy and the provision of updated guidance to decision-makers. During focus group discussions with PV decision-makers, staff advised the ANAO that it was difficult, at times, to determine what the current guidance regarding a certain aspect of PV processing was. The processing of further PV's for Temporary Protection Visa (TPV) holders … had highlighted the need for accurate and up to date guidance for decision-makers due to the complex nature of the case and legislation.
- The ANAO also identified some shortcomings with the Country Information Service (CIS):
- … the information contained within DIMIA's CIS does not always provide decision-makers with the level of detail of a situation in a particular country that they required. As a result, decision-makers were required to supplement the information gained from CIS with other sources. This increases the risk that the information is neither up to date nor accurate.[78]

The ANAO audit also examined the quantity and quality performance measures or indicators specified for the Refugee and Humanitarian program in DIMIA's Portfolio Budget Statement. Then, as now, DIMIA's quantity indicators required that a certain

78 Australian National Audit Office, *Management of the Processing of Asylum Seekers*, p. 15.

number of applications be finalised in the financial year (for example, 7,650 onshore protection applications and 8,950 ministerial intervention assessments of which 5,123 are post review assessment). The quality indicators required a certain percentage of applications be finalised within a certain time frame (for example, 60 per cent of applications by persons in immigration for protection visas and 80 per cent of community applications are to be finalised within 42 and 90 days of lodgement respectively where there are no factors outside DIMIA's control).[79]

The ANAO found that the latter did not provide a complete indicator of quality of decision-making as they only measured the timeliness of visa processing. It noted that better practice required a broader set of indicators such as coverage, accuracy, peer review, conformity to specifications and client satisfaction. To this end, it recommended that the quality indicators for DIMIA's protection visa decision-making be expanded beyond timeliness.[80]

DIMIA accepted the above recommendation and undertook to explore 'appropriate opportunities to adjust its performance measures' accordingly.[81] The committee notes, however, that the quality performance measures or indicators prescribed for Australia's Refugee and Humanitarian program appear to have remained unchanged.

The committees notes the advice from ANAO that, in auditing DIMIA's onshore processing of asylum seekers claims, the ANAO had to rely on, and measure DIMIA against the rules, standards, targets and measures that DIMIA itself had developed and put in place for itself.[82]

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79 Australian National Audit Office, *Management of the Processing of Asylum Seekers*, p. 49; DIMIA, *2004-2005 Annual Report*, p. 95.

80 The ANAO proposed that the new performance indicator or measure incorporate DIMIA's formal quality assurance program which examines aspects such as accuracy of records, the level of documentation and whether correct checks had been carried out. Australian National Audit Office, *Management of the Processing of Asylum Seekers*, p. 50.

81 Australian National Audit Office, *Management of the Processing of Asylum Seekers*, p. 50.

82 Mr Meert, ANAO, *Committee Hansard*, 7 October 2005, pp 3-4, 12.